



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

September 20, 2022

Re: FOIA Request No. NLRB-2022-000344

Dear Shunhe Wang (Yale University):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on December 28, 2021, for the following:

1. All documents withheld under the deliberative process privilege (DPP) by the NLRB, and all documents in which it explains its rationales for withholding under the DPP (e.g., the original FOIA request and response, the briefs in the case), in response to all FOIA requests at issue in the following cases:
 - a. *Wayland v. N.L.R.B.*, 627 F. Supp. 1473 (M.D. Tenn. 1986).
 - b. *Strang v. Collyer*, 710 F. Supp. 9 (D.D.C. 1989).
 - c. *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975).
 - d. *Marathon LeTourneau Co., Marine Div. v. N.L.R.B.*, 414 F. Supp. 1074 (S.D. Miss. 1976).
 - e. *Joseph Horne Co. v. N. L. R. B.*, 455 F. Supp. 1383 (W.D. Pa. 1978).
 - f. *Electri-Flex Co. v. N.L.R.B.*, 412 F. Supp. 698 (N.D. Ill. 1976).
 - i. Specifically, at the very least the “Class I Documents” described in the case.
 - g. *Associated Dry Goods v. N.L.R.B.*, 455 F. Supp. 802 (S.D.N.Y. 1978).
2. Any summary tables or databases of *Vaughn* indices about records created before twenty-five years ago that the agency has still retained.

You assumed financial responsibility for the processing of your request in the amount of \$50.00 but requested a fee waiver.

We acknowledged your request on December 28, 2021. We regret the delay in our final response.

Please be advised that given the age of the litigated cases, the requested information, “documents withheld” or other case records you seek all predate the Agency’s current electronic casehandling system, NxGen, which generally

maintains NLRB case records from 2011 to present. Notwithstanding, various electronic searches were conducted, including running queries in the system using the provided case names; using the Agency's custom document search tool, Integrated Search, or iSearch, which searches specific case and document data and/or document content; and searching the Agency's public website. None of these electronic searches identified any records or case files responsive to your request.

It should be noted that most Agency records are stored, and thus are searchable, by either the NLRB case name or number or the employer's name, and cannot be located or searched for by a court case number. Because no case numbers were provided, our search efforts for this request, in an effort to respond to items 1a through 1g, included searching the Internet and Westlaw legal database to try to find the corresponding NLRB case numbers for the various requested court cases.

Given the age of the cases, it is necessary to explain the Agency's record retention policies governing the requested records. Pursuant to the Agency's record retention and disposition policy, NLRB case records are retained for a six-year period, which commences at the close of the calendar year during which the case is closed. In addition, FOIA records and files are destroyed six years after final determination by the NLRB or three years after final adjudication by the courts, whichever is later. These records are then destroyed, unless they are selected for permanent retention based on their legal significance.

As part of our various search efforts, we directed an inquiry to the Agency's Records Management Section. Staff in that office conducted several manual and electronic searches, which involved searching the cases that were selected to be permanently retained and where the underlying NLRB case number was known. The results of those searches are detailed in the chart below

We also directed a search inquiry to the Agency's Contempt, Compliance, and Special Litigation Branch, the office which would have been responsible for handling the litigation of the referenced cases. Staff in that office searched various electronic lists and discovered that several boxes containing potentially responsive records were housed/stored in a Federal Records Center. After those boxes were retrieved from the Records Center, a manual review was conducted of the contents of each box, and the results also detailed in the chart below.

Request Number	Court Case	Search results
1a	<i>Wayland v. N.L.R.B.</i> , 627 F. Supp. 1473 (M.D. Tenn. 1986)	<p>An Internet search was conducted to find an NLRB case number since none was provided. This search located an 11-page order dated February 11, 1986, a copy of which is included as a courtesy.</p> <p>No additional records are maintained by the Agency for this case, and because an NLRB case number could not be confirmed, it cannot be determined if this case was permanently retained at the National Archives and Records Administration (NARA).</p>
1b	<i>Strang v. Collyer</i> , 710 F. Supp. 9 (D.D.C. 1989)	<p>An Internet search was conducted to find an NLRB case number since none was provided. This search located a five-page order that issued on March 31, 1989, a copy of which is included as a courtesy. Also, a 13-page Memorandum in Support of the General Counsel's Motion for a Protective Order or in the Alternative a Stay of the Answers to the First and Second Set of Interrogatories was found in one of the boxes retrieved from the Federal Records Center.</p> <p>No additional records are maintained by the Agency for this case, and because an NLRB case number could not be confirmed, it cannot be determined if this case was permanently retained at the National Archives and Records Administration (NARA).</p>

Request Number	Court Case	Search results
1c	<i>N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132 (1975).</i>	<p>A search of Westlaw located a 17-page record of Supreme Court opinion that issued on April 28, 1975, a copy of which is included as a courtesy.</p> <p>No additional records are maintained by the Agency for this case, and because an NLRB case number could not be confirmed, it cannot be determined if this case is permanently retained at the National Archives and Records Administration (NARA).</p>
1d	<i>Marathon LeTourneau Co., Marine Div. v. N.L.R.B., 414 F. Supp. 1074 (S.D. Miss. 1976)</i>	<p>A search of Westlaw located a ten-page record of the court opinion that issued on June 9, 1976, a copy of which is included as a courtesy. This document shows the NLRB case numbers as 16-CA-7723, 16-CA-7885, and 16-CA-7913, which are permanently retained at the National Archives and Records Administration (NARA). Instructions for requesting these records from NARA are provided below.</p> <p>No additional records are maintained by the Agency for this case.</p>
1e	<i>Joseph Horne Co. v. N. L. R. B., 455 F. Supp. 1383 (W.D. Pa. 1978)</i>	<p>An Internet search was conducted to find an NLRB case number since none was provided. This search located a seven-page order that issued on September 21, 1978, a copy of which is included as a courtesy. This document indicates the underlying NLRB case number is 5-CB-1352, which was not permanently retained at NARA.</p> <p>No additional records are maintained by the Agency for this case.</p>

Request Number	Court Case	Search results
1f	<i>Electri-Flex Co. v. N.L.R.B.</i> , 412 F. Supp. 698 (N.D. Ill. 1976)	<p>An Internet search was conducted to find an NLRB case number since none was provided. This search located a five-page motion that was filed on April 8, 1976, a copy of which is included as a courtesy. This document indicates the NLRB case numbers are 13-CA-14739 and 13-CA-15036, which were not permanently retained at NARA.</p> <p>No additional records are maintained by the Agency for this case.</p>
1g	<i>Associated Dry Goods v. N.L.R.B.</i> , 455 F. Supp. 802 (S.D.N.Y. 1978)	<p>An Internet search was conducted to find an NLRB case number since none was provided. This search located a 13-page opinion that issued on July 13, 1978, a copy of which is included as a courtesy. This document indicates that the two NLRB cases were investigated in the Region 25 Indianapolis office, but the specific NLRB case numbers are unknown.</p> <p>No additional records are maintained by the Agency for this case, and because an NLRB case number could not be confirmed, it cannot be determined if this case is permanently retained at the National Archives and Records Administration (NARA).</p>

Regarding paragraph 2 of your request, the following records were located in the file boxes retrieved from the Federal Records Center:

Case	Search Results
<p><i>Frank Burley v. NLRB</i></p> <p>Case No. CIV 94-5748</p>	<p>Thirty-five (35) pages were located which include a 21-page Brief in Support of NLRB's Motion for Summary Judgment dated February 15, 1995; three pages from the ULP casehandling manual; a FOIA request dated May 18, 1994; a FOIA response dated June 9, 1994; a FOIA request</p>

	dated June 13, 1994; a FOIA response dated July 6, 1994; a FOIA appeal dated July 25, 1994; a response to the FOIA appeal dated August 12, 1994; and a cover letter for the Agency's Answer to Complaint in <i>Burley v. NLRB</i> , Case No. 94-5748, dated February 13, 1995.
<i>Robert W. Kilroy and American Commercial Barge Line Company v. NLRB</i> Case No. C-1-84-0001	Two hundred and nine (209) pages were located which include a 15-page Reply of Defendants NLRB, et al. to Cross-Motion for Summary Judgment and Response to Defendants' Motion for Summary Judgment of Plaintiffs Kilroy and American Commercial Barge Line with a two-page Certificate of Service dated December 7, 1984; an 11-page Plaintiffs' Outline Summary of Points Raised and Authorities Relied Upon in Support of Plaintiffs' Motion for Summary Judgment and in Response to Defendants' Motion for Summary Judgment (undated); a 38-page Defendants Memorandum in Support of Motion for Summary Judgment with a two page Certificate of Service dated October 31, 1984; a 115-page <i>Vaughn</i> index; a 13-page Order with a two-page Certificate of Service dated September 23, 1987; and an 11-page Opposition to Plaintiffs' Supplemental Application for Award of Attorney's Fees dated September 28, 1987.

As stated above for the case of *Marathon LeTourneau Co., Marine Div. v. N.L.R.B.*, the Agency's NLRB case numbers are Case Nos. 16-CA-7723, 16-CA-7885, and 16-CA-7913, which are permanently retained at NARA.

If you wish to obtain records from NARA, you should visit the NARA website at <https://www.archives.gov/research>. For guidelines and contact information regarding Services for Off-site Researchers, Research Support Services, or conducting your research on site at NARA, you can go to <https://www.archives.gov/research/start/plan-your-visit>.

Other than what is explained above, there are no other records maintained by this Agency that are responsive to your request.

For the purpose of assessing fees, we have placed you in Category B, which generally covers educational institutions that operate a program or programs of scholarly research, NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vi). We have placed you in this category, because you are a student at an educational institution seeking records to further scholarly research. Accordingly, there is no charge assessed for this request.

You may contact Jodilyn Breirather, the FOIA Specialist who processed your request, at (202) 368-1927 or by email at Jodilyn.Breirather@nrlb.gov, as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency's FOIA Public Liaison is:

Kristine M. Minami
FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at:

<https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (326 pages)